Editor's Note: appeal filed, Civ.No. 93-1427-FR (D. Or., Nov. 9, 1993), affirmed 952 F.Supp. 1448 (Oct. 7, 1996); appeal filed, No. 96-36286, (9th Cir. Dec. 5, 1996), aff'd, 139 F.3d 726, (March 20, 1998), petition for cert filed June 17, 1998, No. 97-2037, 67 USLW 3011, cert denied, Oct. 5, 1998, 67 USLW 3230, 119 S.Ct. 70

GARY HOEFLER ET AL.

IBLA 90-428 Decided September 14, 1993

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring a placer mining claim null and void ab initio. ORMC-19689.

Affirmed.

1. Mining Claims: Lands Subject to--Mining Claims: Relocation--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Generally

   A placer mining claim was properly declared null and void because it was located on land withdrawn from mining when the claimants failed to show that they had an unbroken chain of title to locators of a claim located prior to withdrawal.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Lands Subject to--Mining Claims: Location--Mining Claims: Possessory Right--Mining Claims: Recordation

   Placer mining claimants who rely on the provisions of 30 U.S.C. § 38 (1988) to prove location and posting of a mining claim at a time when the land embraced by the location was open to location must comply with the recordation requirements of section 314 of the FLPMA of 1976, 43 U.S.C. § 1744 (1988). Where such a claim has not been recorded, it is a nullity.

APPEARANCES: Roger F. Dierking, Esq., and Philip Schuster, Esq., Portland, Oregon, for Gary Hoefler, Don Wurster, Cameron Anderson and Robin Anderson; Roger W. Nesbit, Esq., Office of the Solicitor, Pacific Northwest Region, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Gary Hoefler, Don Wurster, Cameron Anderson, and Robin Anderson have appealed from a June 6, 1990, decision of the Oregon State Office, Bureau of Land Management (BLM), declaring the Wilson placer mining claim, ORMC-19689, null and void ab initio because the land on which it was located

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was withdrawn from location or entry on January 7, 1926, as part of Powersite Classification No. 123.

The BLM decision found that appellants had failed to provide proof that the Wilson claim was "in actuality the Navajoe Placer Mine located December 17, 1912, * * * at the time when the lands were open to mineral entry." This finding related to a notice sent by BLM to appellants on August 2, 1989, that additional evidence of title was required to establish the validity of their Wilson claim located in the Siskiyou National Forest on the Illinois River in the NW¼ sec. 3, T. 38 S., R. 9 W., Willamette Meridian, Josephine County, Oregon. BLM pointed out that the location notice provided by appellants on September 10, 1979, indicated the claim was located in 1934 within an area closed to mining by a powersite withdrawal. BLM observed that if, as appellants had stated earlier, the 1934 location was an amendment of a 1912 location, evidence of that fact should be provided. Appellants then provided additional information concerning the claim, which was submitted by BLM to the Office of the Regional Solicitor. When the additional title documents were furnished, counsel for appellants for the first time raised the possibility that 30 U.S.C. § 38 (1988), a savings clause of the mining law, would be relied upon by appellants to establish that they had held and worked the claim for the requisite length of time while the land was open to mineral entry so as to support their claim. See letter from Dierking to BLM dated Aug. 25, 1989.

A Solicitor's opinion evaluated the arguments and documents submitted by appellants to BLM to establish the genesis of their claim in 1912 and concluded that no connection between the 1934 amended location of claim and the 1912 claim had been made. See Wilson Placer Claim (ORMC 19689) Title Opinion dated May 2, 1990, at 3, 4, and 5. Also considered by the opinion was whether, while the land at issue was open to mineral location between 1955 and 1968, a possessory right was acquired within the contemplation of provisions of 30 U.S.C. § 38 (1988) by persons working and holding the claim for the period of the Oregon statute of limitations governing mining claims. The opinion also considered the effect of the Mining Claims Rights Restoration Act of 1955 (MCRRA), 30 U.S.C. § 621 (1988) and arguments raised by counsel for appellants concerning estoppel and laches.

Arguments concerning the effect of section 38, equitable estoppel, and laches have been repeated on appeal by counsel for appellants, although the decision under review does not refer to 30 U.S.C. § 38, nor does it address possible possessory rights acquired by appellants during the period 1955 through 1968 or before 1926. Here, as was the case in Steven R. Heady, 110 IBLA 245 (1989), although the appellants wish to expand the scope of our review beyond the actual decision issued by BLM, we must confine ourselves to that which was decided by BLM. In this case BLM simply found that appellants had, for the purpose of continuing the existence of their Wilson claim pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1988), filed a location notice for a 1934 claim that was invalid when made because it was located on lands that were withdrawn from mining by a powersite reservation. The June 1990

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BLM decision rejected the argument that the filing made by appellants gave notice that the Wilson claim was actually an earlier claim located in 1912 before the powersite withdrawal.

In their statement of reasons (SOR), appellants argue that the June 6, 1990, BLM decision was in error because, first, evidence offered to BLM by appellants established that the amended Wilson claim, filed in 1934, related back to the 1912 Navajoe claim through a series of mesne conveyances that included a 1929 location of a placer claim made by George Wilson that was amended in 1934 (SOR at 10-13). Second, appellants contend that if the Wilson claim cannot be related back to the 1912 location in order to avoid the effect of the powersite withdrawal made in 1926, then they and their predecessors in interest worked and occupied the claim in exclusive adverse possession for more than 10 years when the land was open to mineral entry between 1955 and 1968, a circumstance that entitles them, under provision of 30 U.S.C. § 38 (1988), to a finding that the Wilson claim is valid. 1/ Finally, they contend that the United States is estopped to deny the validity of their claim under the doctrines of equitable estoppel and laches because of agency inaction and delay in the handling of their claim documentation. Appellants request a hearing to permit them to prove these allegations, and argue that their claims of adverse possession, equitable estoppel, and laches raise issues of fact that can only be resolved by fact-finding, concluding that due process requires an evidentiary hearing in this case. In support of their arguments on appeal and request for hearing they have offered 31 exhibits, including a deposition taken on July 24, 1990, from one of their predecessors in interest. For reasons explained below, the request for hearing is denied and the June 1990 BLM decision is affirmed.

1/ Section 4 of MCRRA, 30 U.S.C. § 623 (1988) provided that within 1 year after Aug. 11, 1955, owners of unpatented mining claims located on land withdrawn for power purposes were required to file for record with the United States land office a copy of the notice of location of the claim. On Aug. 13, 1956, Barnes filed a copy of the location notice for the amended Wilson claim for record pursuant to the 1955 Act. For reasons described in detail in United States v. Browne, 124 IBLA 247, 250-51 (1992), this tardy filing did not, by itself, invalidate his attempt to claim lands previously withdrawn from mining for placer mining purposes. On Oct. 2, 1968, the
land on which the Wilson claim was located was again withdrawn from mineral location and entry under the Wild and Scenic Rivers Act of 1968, 16 U.S.C. § 1278 (1988), to permit evaluation of part of the Illinois River as a potential component of the Wild and Scenic Rivers System. Pursuant to this withdrawal, on Oct. 19, 1984, Congress designated the Illinois River segment involving the Wilson Claim as a component of the National Wild and Scenic Rivers System, including all lands within ¼ mile of the riverbank from the Siskiyou National Forest boundary to the Rogue River confluence. See P.L. 98-494. Nonetheless, the June 1990 decision here under review made no finding concerning activity at the claim during the 1955-1968 period. The decision confined itself to the question whether recordation of the 1934 amended Wilson claim was effective to preserve the claim under FLPMA section 314. Of necessity our review is similarly limited.

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The documents provided by appellants establish a chain of title to the claim extending from the present back to October 13, 1937, when James Greig conveyed the claim to O. A. Thomas. Although there are records of statements by Forest Service staff members that indicate they believed there was an unrecorded transfer of the Navajoe Placer Mine to the locator of the Wilson Placer Claim (located by George Wilson on September 3, 1929, no such deed has been furnished, nor have appellants offered the testimony of any of the persons said to have been involved in such an unrecorded transfer to establish that the document ever existed. A similar hiatus exists between George Wilson, who originally located the Wilson Placer Claim in 1929, "about 11 miles down the Illinois river from Selma Ore" and James Greig, the locator of the 1934 claim by the same name which he reported was to be found in "Sec. 3, Tw 37 So. R. 9 West." Although the records furnished on appeal indicate that the Greig location notice probably intended to report that the amended Wilson claim was in township 38 (where the Illinois River runs) rather than in township 37 (where it does not) there is, nonetheless, no clear indication on the record before us that the 1929 Wilson claim and the 1934 amendment of that claim covered the same ground or that there ever was a transfer of the 1929 Wilson placer by George Wilson to anyone. The documentary chain of title provided by claimants therefore begins with the amended claim located by Greig in 1934.

The only evidence offered to connect ownership of the two Wilson claims together is that provided by the 1990 deposition of Albert Donley Barnes (Exhibit 31), who testified that he and his father purchased the Wilson Placer Claim "sometime in the thirties" (Deposition (Dep.) at 6). The claim had a two-story house on it that he used on weekends with his family (Dep. at 8). The house was the same house built in 1913 by the "Brazil boys" (Dep. at 9). The record before us includes a deed to Barnes and his wife, mother, and father, dated December 8, 1938, from O. A. and LaBlanche Thomas of the "Wilson Placer Mining Claim situated in Illinois Mining District, amended notice of which is recorded at page 47 of Volume 35, Mining records of Josephine County." In response to a question whether he recalled "checking out the title and ownership of the claim" Barnes replied that he "didn't think it was necessary" (Dep. at 19). He purchased the claim from Owen Thomas (Dep. at 19). His testimony does not explain why the original claimants of the 1929 Wilson and 1912 Navajoe claims could not be questioned concerning the allegedly missing transfers. Nonetheless, counsel for BLM comments in his response brief, and appellants do not deny, that the original locators of the Navajoe and Wilson claims are all dead. On the record before us, therefore, there is nothing to connect ownership of the Navajoe Placer Mine or the 1929 Wilson Placer Claim to the 1934 amendment of that claim (and thereby to appellants), other than the testimony of Albert Barnes that Johnie and Henry Brazille were the original locators of the claim who built a two-story house on the land now covered by the Wilson claim (Dep. at 9-10, 16) and the Forest Service Mineral Claims Occupancy Report, dated May 20, 1965, that indicated Henry Brazille at some time transferred the claim by quitclaim deed to George Wilson (Exh. 2 at 2; see also Dep. at 16). No document appears in the record to connect the claims.

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Barnes also testified concerning the location of the placer claims on the ground. Because the description of each of the three claims is given in relation to markers established on the ground by the miners, it is not possible to determine by examination of the two location notices whether the three claims actually occupied the same land, although the location descriptions provided for the Navajoe and the 1934 amendment of the Wilson claim suggest the existence of adjacent claims sharing a common central boundary (after an initial call to the north to corner 2 from a point of beginning, the Navajoe claim runs east, while the amended Wilson runs west from the second corner call). All that can reasonably be determined on the record before us, therefore, is that all three claims were placer claims of 20 acres that were located on the north bank of the Illinois river by different locators in 1912, 1929, and 1934. At several unspecified times, Barnes stated in his 1990 deposition, in the company of Johnie Brazille, he went to "check on or restore the corner monuments of the Wilson claim" (Dep. at 16). When he did so, he "restored the old original location corners * * * where [Johnie] marked them" (Dep. at 17). Although it is not clear whether the boundaries so marked were believed to be the boundaries of the 1934 or the 1929 or 1912 claims, Barnes concluded that they were coterminous with the Navajoe Placer Mine markers, although the basis for his belief rested entirely on his acquaintance with Johnie Brazille, who he knew as one of the two original locators of the Navajo Placer Mine. It was not explained if Brazille had located the original corners of all three claims or whether he was present when all three were located (see Dep. at 19). The testimony of Barnes on this crucial point is too vague to establish with reasonable certainty that the Navajoe and Wilson claims were coterminous, although it is clearly offered for that purpose. In the context in which it is offered, however, his testimony does establish that the record that we have concerning these old placer claims is as complete as it is ever likely to be.

[1] Appellants argue that their claim originated in 1912 and therefore remained unaffected by the 1926 powersite withdrawal, contrary to the conclusion reached by BLM. Consequently, they must be prepared to establish the fact of their contention concerning title: they must establish that their claim on land segregated from mineral entry was actually an amendment of a prior location made while the land was open to mineral location. Russell Hoffman (On Reconsideration), 87 IBLA 146, 148 (1985). To satisfy that burden in this case, appellants must show that they have an unbroken chain of title from the original Navajoe Placer Mine Claim. See Grace P. Crocker, 73 IBLA 78, 80 (1983), and cases cited therein. The exhibits they have offered, however, indicate that their contentions cannot be established, because the chain of title that they are able to prove for their Wilson claim does not connect it to the 1912 Navajoe Placer Mine. We therefore conclude that BLM correctly determined that appellants had failed to show that the Navajoe Placer Mine and the Wilson claim were the same entity. Appellants have not shown otherwise.

[2] In the alternative, appellants rely on the provisions of 30 U.S.C. § 38 (1988) to argue that there is proof of holding and working the claim for 10 years, the length of the applicable Oregon statute of limitations, during the period 1955 through 1968 so as to support the establishment of a

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valid location. We need not explore that allegation, however, because even if that were so, there is no evidence that appellants or their predecessors in interest properly recorded any claim with BLM in reliance on section 38, as required by section 314 of FLPMA, 43 U.S.C. § 1744 (1988). See Steven R. Heady, supra at 248. Assuming appellants' predecessors in interest held and worked the Wilson placer claim for the requisite period, there is no evidence of recordation of any claim in reliance on section 38. Although the 1934 location of the Wilson placer claim was properly recorded with BLM in 1979, as noted above, that claim was properly declared null and void ab initio because it was located at a time when the lands were withdrawn from location by the powersite classification.

At any rate, appellants assert they have relied on the lack of prior objection concerning title to the claim from either BLM or the Forest Service to their detriment, and that the United States should be equitably estopped to deny the validity of the claim after allowing so much time to pass before giving notice of the defective filing. They also contend that any defects in their chain of title have been cured by their adverse possession of the property, and that curative action to perfect their title can be taken if it has not already been accomplished. They say nothing, however, about how they expect to be able to make the required filing of their claim, which they allege was perfected before 1976, within the time allotted by Departmental regulation 43 CFR 3833.1-2(a), which requires such filings to be made before October 22, 1979. It is clear that the time to do so has passed.

Appellants do not allege, moreover, that any official of the Government actively deceived them in any way, nor do they point to any law that would have required Federal employees to have handled their claim documents otherwise than they were handled in this case. As was pointed out in Paul Vaillant, 90 IBLA 249, 251 (1986), "BLM does not have a duty to immediately determine the legal status of every claim filed with the agency and to notify claimants of its conclusions." The arguments advanced by appellants concerning estoppel and laches also mistakenly assume such a duty to exist, and must fail because of that same error. Insofar as concerns the arguments raised by appellants about the perceived effect of section 38 on activities in the vicinity of the claim between 1955 and 1968, those matters are not before us because they were not decided by the decision here under review.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Oregon State Office is affirmed.

Franklin D. Arness

Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge